REMARKS

The Official Action dated December 10, 2008 has been carefully considered. Reconsideration is respectfully requested in light of the amendments and remarks presented herein and in light of the Request for Continued Examination which has been filed.

Claims 1, 6, 22 and 40 are herein amended. Claim 43 has been added. Claims 3, 15, and 16 have been cancelled. Support for the amendments can be found in the specification and drawings as originally filed. It is believed that these amendments do not involve introduction of new matter, and entry is accordingly believed to be in order and is respectfully requested. Claims 1-2, 4-14 and 17-43 accordingly remain in the present application and are believed to be in condition for allowance. Reconsideration is respectfully requested.

In the Official Action, the Examiner objected to claims 1-42 as directed toward non-statutory subject matter under 35 U.S.C. § 101. Specifically, with regard to claim 1, the Examiner suggests that the system is "software per se". Applicant respectfully disagrees with the Examiner and does not believe that such a system is per se software. Moreover, Applicant does not believe that any of the claims present 101 issues and is not aware of any authority for the proposition that "software per se" is unpatentable subject matter. However, in order to expedite prosecution, Applicant believes that the amendments to independent claims 1, 6, 22 and 40 overcome these claim objections, and, as such, respectfully requests reconsideration.

Also in the Official Action, the Examiner rejected claims 6-8, 17, 21, 40 and 42 under 35 U.S.C. § 102 as being anticipated and unpatentable over Austin (U.S. Patent Publication 2003/0126184).

However, as will be set forth in detail below, it is submitted that the systems and methods as defined by claims 6-8, 17, 21, 40 and 42 are not anticipated by and are patentably distinguishable over Austin. Accordingly, this rejection is traversed and reconsideration is respectfully requested.

As defined by independent claim 6, from which claims 7-12, 14 and 17-21 depend, the respective computerized methods are for throttling a delinquent process. As defined by independent claim 40, from which claims 41-42 depend, the respective systems include means for determining whether a process is delinquent.

Austin discloses a computer apparatus having a central processing unit (CPU), means for monitoring CPU load, and means for reducing the CPU usage from at least one CPU demand source, thereby reducing CPU load, if the CPU monitoring means determines that a predetermined threshold CPU usage is at least reached in which the CPU usage reducing means comprises a thread clamper (abstract).

Rejection for anticipation or lack of novelty requires, as the first step in the query, that all elements of the claimed invention be described in single reference. *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989), *cert. denied*, 493 U.S.P.Q.853 (1989). Austin does not teach the respective systems and methods as recited in independent claims 6 or 40. With respect to independent claims 6 and 40, these systems and methods address managing CPU resources by evaluating a process, not a thread. A process is not a thread. Processes can include multiple threads (along with possibly other items), but the claimed invention is directed to evaluating a process and not individual threads that may or may not be associated with the process. The evaluation of threads only can lead to numerous problems. For example, as Applicant noted in the specification, if only a thread is evaluated for delinquency and suspension, then this could cause "thread deadlock" and

system crashes (see Specification at p. 6, line 27 – p. 7, line 2). By focusing on the process and not individual threads, the possibility of "thread deadlock" and system crashes is mitigated. Austin's teachings simply fail to recognize such systems and methods as recited in independent claims 6 and 40.

It is therefore submitted, that the presently claimed systems and methods of independent claims 6 and 40, and all claims depending therefrom, are not anticipated by Austin, whereby the rejection under 35 U.S.C. §102 has been overcome. Reconsideration is respectfully requested.

Also, in the Official Action, claims 1-2 and 41 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Austin in view of Ma (U.S. Patent Publication No. 2003/0217296). The Examiner notes that Austin does not teach a monitoring component configured to monitor the delinquent process to provide real-time feedback information regarding CPU resource usage by the delinquent process. But, the Examiner contends that Ma discloses a monitoring component configured to monitor the delinquent process to provide real-time feedback information regarding CPU resource usage. Thus, the Examiner contends that it would have been obvious to one skilled in the art at the time the invention was made to incorporate the teaching of Ma to the method of Austin because one of ordinary skill in the art would have modified the teaching of Austin with real-time feedback to be able to better manage the system performance management decisions.

However, as will be set forth in detail below, it is submitted that the systems as defined by claims 1-2 and 41 are nonobvious and patentably distinguishable over Austin in view of Ma. Accordingly, this rejection is traversed and reconsideration is respectfully requested.

As noted above, Austin fails to teach respective systems for managing CPU resources by evaluating a process. Claim 1, relatable to independent claims 6 and 40 (from which claim 41 depends), is generally directed to a system for managing CPU resource through evaluating a process. The failures of Austin with respect to independent claims 6 and 40 are the same as for independent claim 1. These failures are also not remedied by the combination with Ma. Ma also fails to teach managing CPU resources by evaluating a process. In view of the failure of Austin and Ma to teach or suggest the presently claimed systems as recited in claims 1-2 and 41, Austin and Ma do not support a rejection under 35 U.S.C. § 103 and do not create a prima facie case of unpatentability. Applicant therefore submits that the 35 U.S.C. § 103 rejection of the presently claimed systems of claims 1-2 and 41 over Austin in view of Ma has been overcome. Reconsideration is respectfully requested.

Finally, in the Official Action, claims 22-28, 37 and 39 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Austin in view of Oulu et al (U.S. Patent No. 6,792,460). The Examiner notes that Austin does not teach determining whether an exemption from monitoring exists for the process and terminating monitoring of the delinquent process if the delinquent process is exempt from CPU throttling. But, the Examiner contends that Oulu et al disclose these steps. Thus, the Examiner contends that it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Oulu et al to the method of Austin because one of the ordinary skill in the art would have modified the teaching of Austin to determine and remove process from monitoring and terminating the monitoring process to be able to better utilize the monitoring system and improve system performance.

However, as will be set forth in detail below, it is submitted that the methods as defined by claims 22-28, 37 and 39 are nonobvious and patentably distinguishable over

Austin in view of Oulu et al. Accordingly, this rejection is traversed and reconsideration is respectfully requested.

As noted above, Austin fails to teach respective systems for managing CPU resources by evaluating a process. Claim 22, relatable to independent claims 1, 6 and 40, is generally directed to a method for managing process utilization of CPU resources by evaluating a process. The failures of Austin with respect to independent claims 1, 6 and 40 are the same as for independent claim 22. These failures are also not remedied by the combination with Oulu et al. Oulu et al also fail to teach managing process utilization of CPU resources by evaluating a process. In view of the failure of Austin and Oulu et al to teach or suggest the presently claimed systems as recited in claims 22-28, 37 and 39, Austin and Oulu et al do not support a rejection under 35 U.S.C. § 103 and do not create a prima facie case of unpatentability. Applicant therefore submits that the 35 U.S.C. § 103 rejection of the presently claimed systems of claims 22-28, 37 and 39 over Austin in view of Oulu et al has been overcome. Reconsideration is respectfully requested.

It is believed that the above remarks provide a complete response to the objections and rejections under 35 U.S.C. §§ 101, 102 and 103, and as such, place the present application having claims 1-2, 4-14 and 17-43 in condition for allowance. Reconsideration and an early allowance are requested.

For at least the reasons set forth above, Applicant respectfully request early allowance of claims 1-2, 4-14 and 17-43. The Examiner is hereby invited to contact Applicant's undersigned counsel by telephone at (513) 698-5092 if the Examiner determines that such might expedite prosecution of the present application. The fee for a three month extension of time under 37 C.F.R. §1.136(a) has been paid herewith. However, if any additional fees are

necessary, the Commissioner may consider this an express authorization to charge any necessary fees to our Deposit Account No. 50-1884.

Respectfully submitted,

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